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Legislative Assembly of Ontario

Standing Committee on Regulations and Private Bills

Second Report 1994

**3rd Session, 35th Parliament
43 Elizabeth II**



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Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

The Honourable David Warner, M.P.P.
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Regulations and Private Bills has the honour to present its Second Report for the Third Session of the Thirty-fifth Parliament and commends it to the House.

Christel Haeck

Christel Haeck, M.P.P.
Chair

Queen's Park
June 1994

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INTRODUCTION

The Committee presents this Report on Regulations filed during the three year period 1990 to 1992 in accordance with its permanent reference, s. 12 of the *Regulations Act* (reproduced as Appendix A), which provides that the Committee shall consider the scope of, and the authority for, all regulations, but not the underlying policies or legislative objectives.

The Terms of Reference of the Committee are contained in Standing Order 106(k) of the Legislative Assembly, which is reproduced as Appendix B.

STATISTICS FOR 1983 - 1992

Volume of Regulations

The following table provides statistical information on the number of regulations filed during the period 1983 to 1992:

Year	Number of Regulations
1983	815
1984	840
1985	703
1986	763
1987	725
1988	769
1989	727
1990	702
1991	789
1992	799

Comments

The use of regulation-making power has been fairly consistent throughout the last decade. The average annual number of regulations is 763 — the same as the annual average for the period covered by this report.

1990

The 1990 regulations were made under the authority of 152 Acts under the administration of 25 Ministries, the Office of the Assembly, the Premier's Office and Management Board of Cabinet. Over three-quarters of the regulations were made under the 41 statutes with five or more regulations made under each. (See Appendix C for a list of these statutes.)

The *Planning Act* accounted for more regulations than any other Act, with 53 regulations. This Act and the five Acts with the next largest numbers of regulations account for close to one-third of all regulations filed in 1990. The other Acts are: the *Highway Traffic Act* (37); the *Crop Insurance Act (Ontario)* (36); the *Environmental Assessment Act* (32); the *Game and Fish Act* (30) and the *Courts of Justice Act* (21).

The Ministry of Municipal Affairs was responsible for the largest number of regulations made (99). Next in line were the Ministry of Agriculture and Food (88); the Ministry of the Environment (66); the Ministry of Health (66); and the Ministry of Transportation (54). Over half of the regulations issued during this period fell under the jurisdiction of these five ministries.

1991

Along with Management Board of Cabinet, 23 Ministries were responsible for the 789 regulations issued under 158 Acts. Forty-four statutes had five or more

regulations made under each, accounting for over 70 percent of the total regulations. (See Appendix D for a list of these statutes.)

The *Planning Act*, as in the previous year, accounted for the largest number of regulations made (55), followed by the *Game and Fish Act* (48); the *Highway Traffic Act* (33); the *Crop Insurance Act* (27); the *Land Registration Reform Act* (21); and the *Education Act* (20).

The Ministry of Health had authority over the largest number of regulations (107), followed by the Ministry of Municipal Affairs (95); the Ministry of Consumer and Commercial Relations (91); the Ministry of Natural Resources (90); and the Ministry of Agriculture and Food (83). These regulations constitute more than half of the regulations made during this period.

1992

The authority for these regulations came from 174 Acts under 24 Ministries, the Office of the Premier and Management Board of Cabinet. Over 70 percent of the regulations were made under the 42 statutes with five or more regulations made under each. (See Appendix E for a list of the statutes.)

Again, the greatest number of regulations made came under the *Planning Act* (90), followed by the *Highway Traffic Act* (46); the *Crop Insurance Act* (40); the *Game and Fish Act* (29); the *Environmental Assessment Act* (25); and the *Farm Products Marketing Act* (25).

Once again the Ministry of Municipal Affairs had jurisdiction over the most regulations made (122), followed by the Ministry of Agriculture and Food (97); the Ministry of Consumer and Commercial Relations (96); the Ministry of Health (64); and the Ministry of the Attorney General (64). These Ministries had authority over more than half of the regulations made.

REGULATIONS REPORTED

After reviewing the 2290 regulations filed during the period 1990 to 1992, the Committee wrote to eight Ministries regarding 29 regulations. Detailed responses were received from all of the Ministries. A number of regulations which would have been the subject of this report were corrected within the three year period. As a result, this committee finds it necessary to report on only two regulations. The Committee's comments are set out below.

Statutory Authority

Reg. 909 of R.R.O. 1990 under the Pension Benefits Act

This regulation deals with the criteria which must be met before the Pension Commission can consent to the payment out of surplus monies. Section 115(1)(j) of the Act gives this regulation-making power to the Lieutenant Governor in Council. Subsections 10(2) and (3) of the regulation provide as follows:

10(2) All persons who are entitled to receive benefits under the pension plan and all members must consent to the terms upon which the surplus is to be paid out of the plan.

10(3) All persons in respect of whom the administrator has purchased a pension, deferred a pension or ancillary benefit, other than those persons who requested that the administrator do so, must consent to the terms upon which the surplus is to be paid out of the pension plan.

It appears to the Committee as if the individuals referred to in subsections 10(2) and (3) are carrying out the regulation-making function rather than the Lieutenant Governor in Council, which would be in contravention of guideline (ii).

The Legal Services Branch of the Ministry of Finance has referred to section 78 of the *Pension Benefits Act* which provides that no money may be paid out of a pension plan to an employer without the prior consent of the Pension Commission of Ontario. According to the Ministry subsections 10(2) and (3) are among the preconditions, but not the sole preconditions, which must be satisfied before the Commission grants its consent to the payment. The Legal Services Branch has further advised that for clarity subsections 10(2) and (3) would benefit from the use of the term "written agreement" rather than "consent".

The Committee has given the Ministry's position consideration. While the Committee acknowledges that subsections 10(2) and (3) are among preconditions which must be satisfied, it is the Committee's view that these subsections can function as more than preconditions, and, in those instances, provide for an extension of regulation-making authority. The Committee does not see this problem being corrected by the change in terminology suggested.

Precise and Unambiguous Language

O.Reg. 740/92 under the Game and Fish Act

O. Reg 740/92 made under the *Game and Fish Act* sets out conditions under which fishing licenses may be issued. More specifically, section 15 prescribes the conditions under which an outdoors card, a combined hunting/fishing outdoors card, a non-resident sport fishing licence or temporary outdoors card can be used.

Subsection (4) states:

A licence holder who is issued a tag shall attach it to the back of the appropriate licence unless the holder has a combined hunting/fishing outdoors card, in which case, the license holder shall carry the tag on his or her person.

The new French version as found in O.Reg 777/92 stated:

Le titulaire d'un permis qui se voit délivrer une vignette l'appose au verso du permis approprié.

The French and English versions were not equivalent. In this regard, the Legal Services Branch of the Ministry of Natural Resources advised that an amendment to the regulation would be prepared to rectify the error. The amendment has since been published in O. Reg. 670/93.

APPENDIX A

Regulations Act, s. 12

APPENDIX A
Regulations Act, s.12

12.--(1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.

(2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection (3).

(3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.

(4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his or her administration.

(5) The Standing Committee on Regulations shall, from time to time, report to the Assembly its observations, opinions and recommendations.

APPENDIX B

Standing Order 106(k) of the Legislative Assembly of Ontario

APPENDIX B
Standing Order 106(k) of the
Legislative Assembly of Ontario

XX. COMMITTEES

106. Within the first 10 Sessional days following the commencement of each Session in a Parliament the membership of the following standing committees shall be appointed for the duration of the Session:

(k) Standing Committee on Regulations and Private Bills to be the . . . Committee provided for by section 12 of the *Regulations Act*, and having the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

- (i) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute;
- (ii) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties;
- (iii) Regulations should be expressed in precise and unambiguous language;
- (iv) Regulations should not have retrospective effect unless clearly authorized by statute;
- (v) Regulations should not exclude the jurisdiction of the courts;
- (vi) Regulations should not impose a fine, imprisonment or other penalty;
- (vii) Regulations should not shift the onus of proof of innocence to a person accused of an offence;
- (viii) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like); and

(ix) General powers should not be used to establish a judicial tribunal or an administrative tribunal;

and, the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of the *Regulations Act*, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

APPENDIX C

Lists of Acts under whose authority
five or more regulations were filed in 1990

APPENDIX C
**List of Acts under whose authority five
or more regulations were filed in 1990**

Administration of Justice Act	8
Assessment Act	5
Charitable Institutions Act	7
Courts of Justice Act, 1984	21
Credit Unions and Caisses Populaires Act	5
Crop Insurance Act (Ontario)	36
Education Act	13
Environmental Assessment Act	32
Environmental Protection Act	17
Family Benefits Act	7
Farm Products Grades and Sales Act	18
Freedom of Information and Protection of Privacy Act, 1987	5
Funeral Directors and Establishments Act, 1989	5
Game and Fish Act	30
General Welfare Assistance Act	11
Health Disciplines Act	7
Health Insurance Act	14
Highway Traffic Act	37
Homes for the Aged and Rest Homes Act	7
Insurance Act	10
Land Registration Reform Act, 1984	18
Liquor Licence Act, 1990	9
Local Roads Boards Act	8
Meat Inspection Act (Ontario)	12
Ministry of Colleges and Universities Act	6
Ministry of Health Act	6
Municipal Boundary Negotiations Act, 1981	15
Niagara Escarpment Planning and Development Act	9
Nursing Homes Act	5
Occupational Health and Safety Act	6
Ontario Drug Benefits Act, 1986	10
Parkway Belt Planning and Development Act	16
Pesticides Act	6
Petroleum Resources Act	12
Planning Act, 1983	53
Provincial Offences Act	7
Public Service Act	5
Registry Act	5
Residential Rent Regulation Act, 1986	6
Retail Sales Tax Act	8
Toronto Area Transit Operating Authority Act	5

APPENDIX D

Lists of Acts under whose authority
five or more regulations were filed in 1991

APPENDIX D
**List of Acts under whose authority five
or more regulations were filed in 1991**

Administration of Justice Act	5
Apprenticeship and Tradesmen's Qualification Act	8
Assessment Act	7
Charitable Institutions Act	7
Conservation Authorities Act	5
Consolidated Hearings Act	5
Courts of Justice Act	13
Crop Insurance Act (Ontario)	27
Education Act	20
Employment Standards Act	6
Energy Act	7
Environmental Assessment Act	16
Family Benefits Act	6
Farm Products Grade and Sales Act	5
Farm Products Marketing Act	18
Forest Fires Prevention Act	16
Game and Fish Act	48
General Welfare Assistance Act	11
Health Insurance Act	17
Health Protection and Promotion Act, 1983	20
Highway Traffic Act	33
Homes for the Aged and Rest Homes Act	6
Laboratory and Specimen Collection Centre Licensing Act	5
Land Registration Reform Act	21
Local Roads Boards Act	6
Milk Act	19
Mining Act	17
Ministry of Health Act	20
Municipal Act	6
Municipal Boundary Negotiations Act, 1981	6
Municipal Elections Act	7
Nursing Homes Act	5
Occupational Health and Safety Act	22
Ontario Drug Benefit Act, 1986	6
Ontario Guaranteed Annual Income Act	5
Parkway Belt Planning and Development Act	8
Petroleum Resources Act	7
Planning Act, 1983	55
Prescription Drug Cost Regulation Act, 1986	5
Provincial Offences Act	5
Provincial Parks Act	9
Registry Act	13
Residential Rent Regulation Act, 1986	8
Retail Sales Tax Act	9

APPENDIX E

Lists of Acts under whose authority
five or more regulations were filed in 1992

APPENDIX E
**List of Acts under whose authority five
or more regulations were filed in 1992**

Administration of Justice Act	6
Assessment Act	5
Charitable Institutions Act	6
Courts of Justice Act	16
Crop Insurance Act (Ontario)	40
Education Act	18
Energy Act	12
Environmental Assessment Act	25
Environmental Protection Act	5
Family Benefits Act	8
Farm Products Marketing Act	25
Farm Products Payment Act	5
Game and Fish Act	29
General Welfare Assistance Act	8
Health Disciplines Act	5
Health Insurance Act	14
Highway Traffic Act	46
Homes for the Aged and Rest Homes Act	7
Insurance Act	6
Labour Relations Act	5
Land Registration Reform Act	12
Law Society Act	7
Liquor License Act	11
Local Roads Boards Act	6
Local Services Board Act	8
Milk Act	8
Ministry of Health Act	5
Municipal Act	6
Municipal Boundary Negotiations Act	8
Niagara Escarpment Planning and Development Act	10
Nursing Homes Act	7
Occupational Health and Safety Act	22
Ontario Drug Benefit Act	6
Pension Benefits Act	7
Planning Act	90
Provincial Offenses Act	10
Provincial Parks Act	6
Public Hospitals Act	6
Registry Act	11
Rent Control Act 1992	12
Retail Sales Tax Act	.8
Securities Act	7

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